

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1693 OF 2005

M/s. Nikhil Packaging Pvt. Ltd. & Ors. ...Petitioners
Vs.
The State Bank of India & Ors. ...Respondents

Mr. Uttamrao Ramrao Shinde for self & Partner & as
Director of Petitioner No.1 present
Mr. P. Shinde Adv. i/b. M/s. Dhruva & Co. for
Respondent No.1.

CORAM: F.I.REBELLO & ROSHAN DALVI, JJ.
DATED: 30TH NOVEMBER , 2005

P.C.

1. Counsel for the Petitioner is absent. Shri Uttamrao Ramrao Shinde, Director of Petitioner No.1 and Petitioner No.2 himself present. The matter was adjourned on the last occasion after the Court's indication that the Petition can only be considered after the Petitioner deposits a sum of Rs.40 lakhs. Considering that these are proceedings arising from D.R.T., matter was adjourned to enable the Petitioners to make a statement to this Court. The Petitioner No.2 is present and makes a statement that he is not in a position to deposit the said amount.

2. The Debt Recovery Tribunal passed an Ex-parte order against the Petitioners in the sum of Rs.1,02,32,458.72ps.(Rupees One Crore Two lakhs Thirty Two thousand four Hundred Fifty eight and Paise Seventy two only). The Petitioners moved for setting

aside the order on the ground that it was Ex-parte and also applied for condonation of delay. The learned Tribunal, considering the cause shown was pleased to hold that the same does not amount to sufficient cause and consequently dismissed the application with costs quantified at Rs.5000/-. An appeal came to be preferred against the said order before the .D.R.A.T. After hearing the Petitioners herein and the Respondents, the learned Appellate Forum was pleased to dismiss the Appeal. The Appellate Forum in para 6 of the said order was pleased to hold that the cause shown by the Petitioners is absolutely false and dishonest.

3. This order is the subject matter of the present Petition. To know the bonafide of the Petitioners and to consider giving an opportunity, the Petitioner was asked to deposit from the amount awarded only a sum of Rs.40 Lakhs. That amount has not been deposited. The present proceeding, it appears is nothing but to delay the recovery. Even otherwise after two Tribunals have considered the cause shown and found it not to be sufficient, it is not for us to interfere with the finding of fact in the exercise of our extra ordinary jurisdiction.

(F.I.REBELLO J.)

(ROSHAN DALVI, J.)